

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division



CHARLES HAWKINS, #1019653,

Petitioner,

v.

ACTION NO. 2:16cv720

HAROLD W. CLARKE,
Director VDOC,

Respondent.

FINAL ORDER

Petitioner, a Virginia inmate, has submitted a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. ECF No. 1. Hawkins alleges violations of federal rights pertaining to his convictions on February 14, 2013, in the Circuit Court for the City of Portsmouth for malicious wounding, use of a firearm, and possession of a firearm by a felon. As a result of the convictions, Hawkins was sentenced to serve 18 years in the Virginia penal system with 3 years suspended.

The matter was referred to a United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia for report and recommendation. The Report and Recommendation, filed January 11, 2018, recommends that Respondent's Motion to Dismiss be GRANTED, and

the petition for a writ of habeas corpus be DENIED and DISMISSED with prejudice. ECF No. 13.

Each party was advised of his right to file written objections to the findings and recommendations made by the Magistrate Judge. On January 26, 2018, the Court received Hawkins' objections to the Report and Recommendation. ECF No. 14. Hawkins objected to the Report and Recommendation's finding that his claims were procedurally defaulted and argues that the fundamental miscarriage of justice exception to procedural default should apply. Id.

The Court, having reviewed the record and examined the objections filed by Hawkins to the Report and Recommendation, and having made *de novo* findings with respect to the portions objected to, does hereby adopt and approve the findings and recommendations set forth in the Report and Recommendation. It is, therefore, ORDERED that Respondent's Motion to Dismiss, ECF No. 5, is GRANTED, and the petition for a writ of habeas corpus, ECF No. 1, is DENIED and DISMISSED WITH PREJUDICE. It is further ORDERED that judgment be entered in favor of Respondent.

Hawkins has failed to demonstrate "a substantial showing of the denial of a constitutional right," and therefore, the Court declines to issue any certificate of appealability pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure. See

Miller-El v. Cockrell, 537 U.S. 322, 335-36 (2003).

Hawkins is hereby notified that he may appeal from the judgment entered pursuant to this Final Order by filing a written notice of appeal with the Clerk of this Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within thirty days from the date of entry of such judgment.

The Clerk shall mail a copy of this Final Order to Hawkins and counsel of record for Respondent.

/s/

Rebecca Beach Smith

Chief Judge



Rebecca Beach Smith

CHIEF UNITED STATES DISTRICT JUDGE

Norfolk, Virginia
February 7, 2018